

A BILL

entitled

POLICE AND CRIMINAL EVIDENCE AMENDMENT ACT 2011

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WHEREAS it is expedient to amend the Police and Criminal Evidence Act 2006;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Police and Criminal Evidence Amendment Act 2011.

Amends section 2

2 Section 2(3)(c) of the Police and Criminal Evidence Act 2006 (in this Act referred to as "the principal Act") is repealed and the following paragraph is substituted—

"(c) he is taken following his arrest, to a hospital or another place referred to in section 29(8),".

Amends section 29

3 Section 29(8) of the principal Act is repealed and the following subsection is substituted—

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“(8) The condition is that the detainee’s presence at a hospital or some place other than a police station is necessary—

- (a) because his own health or safety might otherwise be endangered; or
- (b) for the purpose of further investigation into the offence for which he has been arrested and is reasonably required, necessitating his immediate presence or attendance at a hospital or other place, other than at a police station.”.

Amends section 39

4 Section 39 of the principal Act is amended —

- (a) by inserting the following subsection next after subsection (2)—

“(3) The exercise of the power under subsection (1) shall not affect the conditions (if any), to which bail is subject.”; and

- (b) by repealing subsection (5) and substituting the following subsection—

“(5) If the person is not in a fit state to enable him to be so dealt with or to enable that power to be exercised, he may be kept in police detention until he is.”.

Amends section 40

5 Section 40 of the principal Act is amended—

- (a) by repealing subsection (1)(d); and
- (b) by repealing subsection (2).

Amends section 44

6 Section 44 of the principal Act is amended—

- (a) in subsection (2)—
  - (i) in paragraph (b) by deleting “the time of his arrest; and” and substituting “shall be the time of his arrest;” and
  - (ii) by repealing paragraph (c) and substituting the following paragraphs—
    - “(c) in the case of a person arrested in Bermuda elsewhere than at a police station and who either—
      - (i) is taken directly to a hospital under the provisions of section 29(8); or
      - (ii) is first taken to a police station but then taken to a hospital before the provisions of section 58(1)(i) can be complied with,

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is the time at which the person arrested arrives at the hospital;  
and

- (d) in any other case, except where subsection (4) applies, the time at which the person arrested arrives at the first police station to which he is taken after his arrest.”; and

(b) by repealing subsection (4) and substituting the following subsection—

“(4) When a person who is in police detention by reason of having been arrested is taken for any reason to a hospital, whether before or after his first arrival at a police station, any time during which he is being questioned by a police officer in hospital or on the way there or back for the purpose of obtaining evidence relating to an offence, or any time during which the person is subjected to any procedure under sections 57(8), 57(9), or 57A while he is in the hospital, shall be included in any period which falls to be calculated for the purposes of this Part of this Act, but any other time while he is in hospital or on his way there or back shall not be so included.”.

Amends section 52

7 Section 52(b) of the principal Act is repealed and the following paragraph is substituted—

- “(b) the number of applications made under sections 46 and 47 for further detention and the results of those applications; and”.

Amends section 57

8 Section 57(8)(d) of the principal Act is repealed and the following paragraph is substituted—

- “(d) at some other place used for medical purposes.”.

Amends section 58

9 Section 58 of the principal Act is repealed and the following section is substituted—

“Information about rights

58 (1) A person who has been arrested shall be informed in person by the custody officer of his rights under sections 59, 60 and 61 as soon as possible —

- (a) after his arrival at the police station; or  
(b) if he is taken to hospital under section 29(8) either before that can be done or directly from the place of his arrest, his arrival at the hospital,

and shall cause a record to be made in the custody record that he has done so.

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(2) Subsection (1) shall not apply where the person arrested is for the time being—

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent;
- (c) undergoing or in urgent need of medical attention; or
- (d) in a hospital, without the consent of the doctor in charge of his care,

but shall be complied with as soon as possible after the relevant circumstance no longer applies.”.

Amends section 72

10 Section 72(3) of the principal Act is amended by deleting “health care profession” and substituting “health care professional in subsection (1)”.

Amends Schedule 2

11 Schedule 2 of the principal Act is amended—

- (a) in paragraph 2(a) by deleting “believing” and substituting “suspecting”; and
- (b) in paragraph 3(2) by deleting “believing” and substituting “suspecting”.

Commencement

12 (1) This Act shall come into operation on such day as the Minister may appoint by Notice published in the Gazette.

(2) A Notice made under subsection (1) may appoint different days for different provisions of this Act to come into operation.

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### EXPLANATORY MEMORANDUM

The Bill for consideration is the Police and Criminal Evidence Act 2011. This Bill amends the Police and Criminal Evidence Act 2006 (hereafter referred to as “the principal Act”).

Clause 1 is the citation.

Clause 2 amends section 2(3)(c) of the principal Act to make that provision clearer.

Clause 3 amends section 29(8) of the principal Act to permit the police to take an arrested person from their place of arrest, if the place of arrest is a place other than a police station, to another place, for example to a hospital, before taking them to a police station in certain circumstances. This would apply if the detainees health or safety was likely to be endangered or a hospital procedure is required for the investigation.

Clause 4 amends section 39 of the principal Act to insert a new subsection (3) to make it clear that any bail conditions that would have been issued will remain and continue to be relevant even when either the date or the time or both are changed. Clause 4 also inserts a new subsection (5) to reinsert a provision to provide time for the police to deal with a person answering their bail, only when they are in a fit state. A person may not be interviewed, charged or bailed if they are under the influence of drugs or alcohol. This allows the person to lawfully remain in custody until they are sober.

Clause 5 repeals section 40(1)(d) of the principal Act. Section 40(1)(d) provides criteria for a person detained, to remain in custody in order for samples under section 68 of the principal Act to be obtained. Section 68 of the principal Act has already been repealed and as such, the reference to section 68 at section 40(1)(d) is no longer necessary. Clause 5 also repeals section 40(2) of the principal Act because that provision deals with police detention under section 40(1)(d), which has been repealed.

Clause 6 determines when the ‘detention clock’ under the Police and Criminal Evidence Act 2006 will commence and time will be counted for a detainee. Normally the ‘clock’ commences when a detainee arrives at a police station following his arrest. Under clause 6, the ‘clock’ does not start at a hospital when an arrested person is being medically treated but starts when the police start to ask the detainee questions relating to the offence for which has been arrested. The ‘clock’ also operates any time that the detainee is subject to a medical procedure that may be used for evidential purposes under section 57 of the principal Act.

Section 52 of the principal Act sets out the records that the Commissioner of Police is obliged to keep and report on, on an annual basis. Clause 7 amends section 52(b) of the principal Act to reflect the sections under which applications may be made and granted.

Clause 8 amends section 57(8)(d) of the principal Act. Section 57(8) of the principal Act specifies places or premises in which an intimate search may be carried out. Section 57(8)

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(a) allows an intimate search to be carried out in certain circumstances, at a police station. As such, it is contradictory for 57(8)(d) (as previously amended) to exclude it.

Clause 9 is dependent on clause 3, i.e. that a person may now be taken to a hospital from the place of his arrest (in addition to being taken to a police station) in certain circumstances. This clause then requires a custody officer to attend that location i.e. the hospital, to ensure that a person's detention is lawful and that their rights under sections 59, 60 and 61 of the principal Act are administered in the same manner they would have been administered if they are seen by the custody officer at a police station. A custody record must be commenced to record this procedure by the custody officer. Section 58(2)(a) to (d) also confirms the circumstances when this procedure may be delayed when a person's urgent need to receive medical attention first, is taken into account.

Clause 10 amends section 72 to make an editorial change.

Clause 11 amends Schedule 2 to the principal Act to change the threshold for obtaining special procedure material from 'suspicion' to 'belief'. Suspicion is easier to support than belief. Other similar sections in the principal Act relating to warrants refer to 'suspicion' and not 'belief'. This change from 'suspicion' to 'belief' is required for the purpose of consistency as other sections in the principal Act dealing with powers relating to search warrants use this same threshold.

Clause 12 empowers the Minister to bring the Act into operation by Notice published in the Gazette.